

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HAROLD S. DIAMOND, Attorney in Fact
for SUSAN DIAMOND and LYNN DIAMOND

Claim No. CU -3631

Decision No. CU 3736

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$323,000.00, was presented by HAROLD S. DIAMOND, Attorney in Fact for SUSAN DIAMOND and LYNN DIAMOND, and is based upon an asserted loss sustained in connection with Cuban currency and bonds issued by the Republic of Cuba. SUSAN DIAMOND and LYNN DIAMOND have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimants assert the ownership of 20,000 Cuban pesos each, and have submitted the currency to the Commission as evidence of their ownership. The record establishes that claimants obtained the pesos during the month of June, 1961 in New York City.

On August 4, 1961, Cuban Law 963 was published in the Official Gazette. This law ordered an exchange of old currency for new and, among other provisions, declared all currency outside the territory under the jurisdiction of the Cuban State at the time of promulgation to be null and of no legal force.

In our decision entitled the Claim of Betty G. Boyle (Claim No. CU-3473, which we incorporate herein by reference), we held that Law 963 and its implementation thereof constituted a taking of property by the Government of Cuba within the contemplation of Title V of the Act and that this type of claim is certifiable as a loss to an American national under the facts and conditions set forth therein.

On the basis of evidence of record in the instant claim, the Commission finds that these claimants come within the terms of the Boyle decision; that they were American nationals at the requisite times; that they were the owners of 20,000 Cuban pesos each on August 4, 1961 when the pesos were automatically declared null and of no legal force; that the pesos were worth the equivalent in United States dollars on that date; and that claimants suffered a loss in the amount of \$20,000.00 each within the meaning of Title V of the Act.

Claimants also assert the loss of ownership interests in bonds issued by the Republic of Cuba, known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1937-1977.

On the basis of the record, the Commission finds that claimants purchased Republic of Cuba 4-1/2% Bonds as follows:

SUSAN DIAMOND:

<u>Date</u>	<u>Face Amount</u>	<u>Price Paid</u>
May 8, 1961	\$ 5,000.00	\$ 2,512.50
May 17, 1961	15,000.00	6,187.50
July 20, 1961	21,000.00	7,612.50
October 16, 1961	3,000.00	1,072.50
November 1, 1961	5,000.00	1,812.50
January 23, 1962	21,000.00	7,717.50
February 5, 1962	33,000.00	12,081.25
February 14, 1962	9,000.00	3,281.25
March 11, 1962	<u>38,000.00</u>	<u>13,472.50</u>
	\$150,000.00	\$55,750.00

(An additional \$10,000.00 worth of bonds had been purchased on May 8, 1961 but were sold by the above claimant.)

LYNN DIAMOND:

May 8, 1961	\$ 15,000.00	\$ 6,737.50
May 17, 1961	15,000.00	6,187.50
December 11, 1961	<u>20,000.00</u>	<u>7,300.00</u>
	\$ 50,000.00	\$20,225.00

In our decision entitled the Claim of Clemens R. Maise (Claim No. CU-3191), we held that the nonpayment of the obligation on bonds of this issue constituted a taking of the property of the bondholders on December 31, 1960.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission.

In similar cases, claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities

on the date of loss and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimants, and in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimants, as assignees by purchase, acquired the claim for the losses sustained by the assignors of the claimed securities, but under the limitations provided in Section 507 of the Act (supra), are limited to \$75,975.00, which is the actual consideration paid for the bonds by SUSAN DIAMOND (\$55,750.00) and LYNN DIAMOND (\$20,225.00).

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

The Commission concludes, however, that the amount of loss sustained by claimants herein shall be increased by interest thereon at the rate of 6% per annum from the date of acquisition of the Republic

of Cuba bonds, on this portion of the claim, to the date on which provisions are made for the settlement thereof. Therefore, in the instant claim, it is ordered that interest be included at 6% per annum for the respective claimants from the dates of loss and on the amounts as follows:

SUSAN DIAMOND:

<u>FROM</u>	<u>ON</u>
May 8, 1961	\$ 2,512.50
May 17, 1961	6,187.50
July 20, 1961	7,612.50
August 4, 1961	20,000.00
October 16, 1961	1,072.50
November 1, 1961	1,812.50
January 23, 1962	7,717.50
February 5, 1962	12,081.25
February 14, 1962	3,281.25
March 11, 1962	13,472.50

LYNN DIAMOND:

<u>FROM</u>	<u>ON</u>
May 8, 1961	\$ 6,737.50
May 17, 1961	6,187.50
August 4, 1961	20,000.00
December 11, 1961	7,300.00

CERTIFICATION OF LOSS

The Commission certifies that HAROLD S. DIAMOND, Attorney in Fact for SUSAN DIAMOND, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-five Thousand Seven Hundred Fifty Dollars (\$75,750.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that HAROLD S. DIAMOND, Attorney in Fact for LYNN DIAMOND, suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty Thousand Two Hundred Twenty-five Dollars (\$40,225.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUL 2 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)